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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THE GUARDIAN CORPORATION, a
California corporation; FRANK ARIZA,
an individual; SHANNON QUINN, an
individual; on behalf of themselves and all
persons similarly situated,

Plaintiffs,

v.

AT&T SERVICES, INC., a corporation
doing business as AT&T,

Defendants.

CASE NO. '10 CV 1846 WQH

(Class Action)

COMPLAINT FOR: (1) UNLAWFUL,
UNFAIR AND DECEPTIVE BUSINESS
PRACTICES PURSUANT TO CAL.
BUS. & PROF. CODE §17200, (2)
FRAUD AND DECEIT, AND (3)
VIOLATION OF THE CONSUMER
LEGAL REMEDIES ACT, CAL. CIVIL
CODE §1770

1 Plaintiffs THE GUARDIAN CORPORATION, FRANK ARIZA and SHANNON
2 QUINN ("Plaintiffs"), on behalf of themselves and on behalf of all persons similarly situated
3 alleges the following on information on belief:
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5 INTRODUCTION

6 1. This is a class action for unfair, unlawful and deceptive business practices and for
7 fraud and deceit brought against Defendant AT&T SERVICES, INC., a corporation doing business
8 as AT&T ("AT&T"). This action is based on Defendants' business pattern and practice of unfairly,
9 unlawfully and deceptively charging Plaintiffs and every other member of the class for fraudulent
10 and inflated data usage and data transfer. Plaintiffs and similarly situated consumers, have service
11 agreements with AT&T for cellular phone and/or wireless network services. These agreements
12 provide that the consumers will be charged specified amounts for certain data usage and data
13 transfer on AT&T's cellular phone and/or wireless network. AT&T secretly and deceptively
14 artificially inflates the amounts charged to consumers of AT&T's cellular phone and/or wireless
15 network through incorrect measurement, which is three to five times higher than the actual data
16 usage and data transfer for the consumer, and then incorrectly bills the consumer for the inflated data
17 usage and data transfer amounts rather than the actual data amount. As a result, AT&T fraudulently
18 represents that the data usage and data transfer for the consumer's service is higher than the data
19 usage and data transfer actually is, resulting in inaccurate billing and inflated data transfer charges
20 to the consumer.

21 2. At bottom, AT&T's systems improperly measure data usage and data transfer by three
22 to five times the actual amount. These overcharges are concealed from the customer. This case is
23 a high-tech version of a gas pump meter that incorrectly measures the gallons of gas being pumped
24 and then applies the per gallon charge to the fraudulent measure of gas, so that the consumer pays
25 more than is proper.

26 3. Except as otherwise provided herein, Plaintiffs seek restitution on behalf of all
27 persons in California who paid data transfer charges to AT&T in excess of their normal monthly
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1 data plan during the period beginning four years prior to the filing of this complaint and through the
2 present.

3 4 PARTIES

5 4. Defendant AT&T SERVICES, INC., is a corporation with headquarters in Texas.
6 AT&T SERVICES, INC. conducts business under the name "AT&T", and is collectively referred
7 to herein as "AT&T" or "DEFENDANT". AT&T is the party who established and is responsible
8 for the practices alleged herein. DEFENDANT is engaged in the business of providing broadband
9 and other wireless and wireline communications services to mass market, business, government and
10 customers throughout California and the United States, including significant business and operations
11 in this County. AT&T has a nationwide presence in wireline and wireless markets, with millions
12 of Americans connecting to a AT&T network daily. AT&T generated more than \$124 billion in
13 2008 total consolidated operating revenues, and at year-end 2008.

14 5. Plaintiff THE GUARDIAN CORPORATION ("GUARDIAN") is California
15 corporation. GUARDIAN is a consumer with an agreement with AT&T for cellular phone and/or
16 wireless network services. GUARDIAN brings this action individually and on behalf of a class of
17 similarly situated consumers. The claims of GUARDIAN are typical and representative of the
18 claims of the absent members of the Class in that AT&T charged GUARDIAN and all other
19 members of the Class for data usage and data transfer in excess of their actual data usage and data
20 transfer. GUARDIAN and each and every member of the Class paid these charges and thereby
21 suffered a financial injury for which restitution and/or damages from AT&T is required. In this
22 action, GUARDIAN and the members of the Class do not contest the rate charged for data usage
23 and data transfer, instead, GUARDIAN and the members of the CLASS challenge the amount of
24 data usage and data transfer which AT&T attributed to GUARDIAN and the other members of the
25 Class. Finally, there is no federal question at issue in this case, as all questions presented and/or
26 remedies sought are based solely upon state law.

27 6. Plaintiff FRANK ARIAZA ("ARIAZA") is an individual residing in California.
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1 ARIAZA is an individual with an agreement with AT&T for cellular phone and/or wireless network
2 services. ARIAZA brings this action individually and on behalf of a class of similarly situated
3 consumers. The claims of ARIAZA are also typical and representative of the claims of the absent
4 members of the Class in that AT&T charged ARIAZA and all other members of the Class for data
5 usage and data transfer in excess of their actual data usage and data transfer. ARIAZA and each
6 and every member of the Class paid these charges and thereby suffered a financial injury for which
7 restitution and/or damages from AT&T is required. In this action, ARIAZA and the members of
8 the Class do not contest the rate charged for data usage and data transfer, instead, ARIAZA and the
9 members of the Class challenge the amount of data usage and data transfer which AT&T attributed
10 to ARIAZA and the members of the Class. Finally, there is no federal question at issue in this case,
11 as all questions presented and/or remedies sought are based solely upon state law.

12 7. Plaintiff SHANNON QUINN ("QUINN") is an individual residing in California.
13 QUINN is a consumer with an agreement with AT&T for cellular phone and/or wireless network
14 services for personal, family or household purposes. QUINN brings this action individually and on
15 behalf of a class of similarly situated consumers. The claims of QUINN are also typical and
16 representative of the claims of the absent members of the Class in that AT&T charged QUINN and
17 all other members of the Class for data usage and data transfer in excess of their actual data usage
18 and data transfer. QUINN and each and every member of the Class paid these charges and thereby
19 suffered a financial injury for which restitution and/or damages from AT&T is required. In this
20 action, QUINN and the members of the Class do not contest the rate charged for data usage and data
21 transfer, instead, QUINN and the members of the Class challenge the amount of data usage and data
22 transfer which AT&T attributed to QUINN and the members of the Class. Finally, there is no
23 federal question at issue in this case, as all questions presented and/or remedies sought are based
24 solely upon state law.

25 8. Collectively, ARIAZA, GUARDIAN, and QUINN are refer to herein as the
26 "PLAINTIFFS."

27 9. PLAINTIFFS are unaware of the true names and capacities of the remaining
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1 defendants who may be responsible for the alleged conduct in some respect and who therefore may
2 be sued in this action. PLAINTIFFS will amend this complaint when those names and/or capacities
3 become known to PLAINTIFFS. PLAINTIFFS are informed and believe that each of these
4 defendants is in some manner responsible for the events and allegations set forth in this complaint.

5 10. At all material times herein mentioned, each of the defendants was the principal,
6 joint venturer, successor, agent, aider & abettor, and/or employee of each of the remaining
7 defendants and was, at all relevant times, acting within the course and scope of such plan,
8 conspiracy, successorship, joint venture, agency and employment. In doing the things alleged in the
9 causes of actions stated herein, each and every defendant was acting within the course and scope
10 of this agency or employment and was acting with the consent, permission and authorization of each
11 of the remaining defendants. All actions of each defendant as alleged in the causes of action stated
12 herein were ratified and approved by every other defendant or their officers or their managing
13 agents.

14 15 CONDUCT

16 11. AT&T's business involves the providing of wireline and broadband services to
17 customers, including individuals, companies, businesses and government entities. To provide these
18 services, AT&T enters into service agreements wherein for a monthly charge, customers have access
19 to AT&T's cellular phone and/or wireless network services. In the event the monthly charge is not
20 for unlimited data usage and data transfer, and the data usage and data transfer for a customer
21 exceeds a specified amount, the customer is billed additional amounts for that data usage and data
22 transfer. In order to profit at the expense of its customers, AT&T intentionally, knowingly and
23 artificially inflates the data usage and data transfer for these customers such that AT&T represents
24 the data usage and data transfer is an amount that is three to five times the actual data usage and data
25 transfer by the customer. AT&T then bills the customer based upon the inflated data usage and data
26 transfer amount, not the actual data used and transferred by that customer. As a result of this
27 concealed fraud and deception, AT&T systematically and uniformly bills these customers for more
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1 data than was actually used by the customer and these customers being able to otherwise verify the
2 accuracy of the charge without the use of an expert in the field and access to AT&T's internal
3 engineering reports.

4 12. As a result of the charges by AT&T during the November 2009 through February
5 2010 time period being excessively high. Plaintiff GUARDIAN attempted to discover why their
6 data usage and data transfer was represented by AT&T to higher than expected. GUARDIAN
7 worked with AT&T's personnel and GUARDIAN's expert and discovered that the data usage data
8 usage and data transfer used by GUARDIAN was actually much lower than represented by AT&T.
9 Bandwidth reports and AT&T's internal engineering reports showed that the actual data usage and
10 data transfer by GUARDIAN were, as a matter of corporate policy, being misrepresented by
11 AT&T's system. As a result, only by using this independent third party expert could the inflated
12 data figures be confirmed. The investigation further revealed that the programs and systems used
13 by AT&T inflated the data usage and data transfer to amounts that far exceeded actual usage.

14 13. As a result of this conduct by AT&T, AT&T was able to systematically bill
15 customers, including the PLAINTIFFS, for data usage and data transfer in excess of true data usage
16 by the customer. AT&T falsely, fraudulently, knowingly and deceptively represented to the
17 PLAINTIFFS and the other members of the Class that the amounts billed for data usage and data
18 transfer, in excess of the normal monthly charge, is the correct amount, when in fact the correct
19 amount is far lower. If the actual data usage was accurately measured and reported by AT&T,
20 customers would either incur lower data usage charges, because the actual data usage was far lower
21 than represented and may not have even exceeded their monthly allocation at all. As a result of this
22 deception, AT&T bills customers for data usage and data transfer which did not occur and AT&T
23 charges these customers substantially more than the amount that is due for their actual data usage.

24 14. The fraudulent inflation of data usage by AT&T is perpetrated using the programs and
25 systems of AT&T which are uniform as to all customers, including the data card used by all
26 customers to access the cellular phone and/or wireless network of AT&T. These fraudulent data
27 usage and data transfer representations resulting in inflated billing were perpetrated on wireless
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1 customers and cellular phone users who incurred data transfer charges in excess of their normal
2 monthly service rate and did not have an applicable unlimited data usage account.

3 15. This action does not challenge the rate of the data usage or data transfer charge, but
4 rather, challenges the accuracy of the mechanism used by AT&T to measure data transfer and usage.
5 PLAINTIFFS contend that AT&T knowingly and intentionally uses a data measuring system that
6 intentionally inflates data usage and data transfer by three to five times the actual data usage and
7 data transfer and results in an incorrect measurement of data. AT&T then uses this fraudulent
8 measure of data to bill customers an inflated amount for data transfer and usage charges in excess
9 of their contracted monthly service charge.

10 16. AT&T's conduct described herein is similar to business practices condemned in
11 by California law and violations of Bus. & Prof. Code § 17200 which have held that (1) charging
12 more than actual costs is unfair and unlawful; (2) overcharging customers is unfair; (3) one who
13 willfully deceives another is unlawful; (4) selling any commodity in less quantity than he or she
14 represents it to be is unlawful; (5) using a measure or measuring instrument when knowing it to be
15 incorrect is unlawful; (7) representing that a transaction confers an obligation upon the customer to
16 pay a certain amount when in fact it does not is unlawful; and (8) misrepresenting a charge for a
17 service rendered on the basis of measure is unlawful. In sum, only the actual data usage and data
18 transfer may lawfully be billed to the customers of AT&T.

19 20 VENUE & JURISDICTION

21 17. This Court has jurisdiction over the PLAINTIFFS' state law class claims pursuant to
22 28 U.S.C. § 1367. The state law class claims are brought as a class action pursuant to Fed. R. Civ.
23 Proc, Rule 23 on behalf of a class that exceeds 100 people, that involves more than \$5,000,000 in
24 controversy. Because the citizenship of is Texas, and the Class is comprised of customers in
25 California, at least one member of the class is diverse from that of DEFENDANT. As a result, this
26 Court has original jurisdiction over the state law class claims under 28 U.S.C. § 1332 (CAFA
27 Jurisdiction). This action is not subject to the jurisdiction of the California Public Utilities
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Commission or the FCC because this action does not challenge any approved data rates charged by AT&T.

18. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because: (i) DEFENDANT is subject to personal jurisdiction in this District; (ii) DEFENDANT maintains offices or facilities in San Diego County, California; and, (iii) DEFENDANT committed the wrongful conduct against members of the CALIFORNIA CLASS in San Diego County, California.

CLASS ALLEGATIONS

19. The relief sought in this complaint is restitution of the excess data transfer and usage charges imposed by AT&T which were billed in excess of the normal monthly charge to the customer for AT&T services.

20. The persons for whose benefit this case is brought consists of thousands of individuals whose claims, except as to amount of restitution, are otherwise identical, in that the amount of restitution to each class member can be calculated by reference to the data transfer and usage charges imposed by AT&T above the normal monthly service charge to the customer. Therefore, the repetitive testimony of each class member at trial would be impracticable, unnecessary, and an inefficient use of judicial resources. Moreover, the exhaustive list of class members is now within the exclusive possession and control of AT&T, and is not now known to Plaintiffs, although the list may readily be obtained using statutory discovery procedures.

21. PLAINTIFFS seek certification of the following Class of consumers: "ALL CALIFORNIA CUSTOMERS OF AT&T'S CELLULAR PHONE OR WIRELESS SERVICES WHO PAID AT&T FOR DATA TRANSFER AND/OR USAGE CHARGES IN EXCESS OF THEIR NORMAL MONTHLY SERVICE CHARGE DURING THE APPLICABLE CLASS PERIOD." The class period applicable to this class is the period beginning on the date four years prior to the filing of this complaint to the present. Excluded from the Class are all defendants and all agents, attorneys, and employees of defendants; all members of the California judiciary sitting in judgment of this case; and, Plaintiff's attorneys and their employees; and, all other persons within

1 three degrees of consanguinity of the aforementioned defendants, attorneys, employees and judges (the
2 "Class").

3 22. There are questions of law and fact common to all members of the Class and which
4 predominate over questions involving individual Class members. The common questions include,
5 *inter alia*, the following:

6 (a) Whether AT&T incorrectly measures data usage or data transfer by its customers;

7 (b) Whether AT&T bills customers for data usage or data transfer in amounts which
8 exceed the actual data usage or data transfer by the customer;

9 (c) Whether AT&T falsely represents on bills to customers that the data usage or the
10 data transfer listed is the actual data usage or data transfer by that customer;

11 (d) Whether AT&T systematically overcharged Class members for data usage or data
12 transfer in amounts which exceed the actual data usage or data transfer by the customer;

13 (e) Whether AT&T's data measuring practices are unlawful;

14 (f) Whether AT&T's data measuring practices are unfair to customers;

15 (g) Whether AT&T's data measuring practices are likely to deceive customers;

16 (h) Whether AT&T's representations concerning the data usage and data transfer by
17 the customer were false;

18 (i) Whether AT&T's billing statements to Class members concealed material facts
19 concerning the data usage and data transfer by the customer; and,

20 (j) Whether AT&T's false representations were intentional and knowing.

21 23. There are no material differences in the substantive laws to be applied to the claims
22 of the Class members because all claims are brought under California law and on behalf of
23 California customers. There is no California law which permits or approves of AT&T's practices
24 as herein alleged.

25 24. The names and addresses of all Class members entitled to restitution are readily
26 ascertainable from the records of AT&T and can be obtained in discovery.

27 25. The representative PLAINTIFFS were injured and lost money by the acts of AT&T,
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1 and will fairly and adequately protect the interests of the class. The PLAINTIFFS have retained
2 counsel competent and experienced in similar class action litigations and other litigations on behalf
3 of the general public.

4 26. The conduct of AT&T with respect to the measuring and billing of data usage and
5 data transfer, as more particularly described above, is uniform and systematic as to all customers in
6 California. AT&T's conduct is therefore a common unlawful, unfair and deceptive business
7 practice within the meaning of California Business and Professions Code Section 17200 et seq.
8 prohibiting such practices affecting all such customers in the Class. The representations of AT&T
9 with respect to the Class members' data usage and data transfer, as more particularly described
10 above, is uniformly false and fraudulent as to all customers in California.

11 27. A class action is superior to any other available methods for the fair and efficient
12 adjudication of this controversy. The amount of each individual claim is too small to warrant
13 individual litigation. Even if any group of class members itself could afford individual litigation,
14 such a multitude of individual litigation would be unduly burdensome to the courts in which the
15 individual litigation would proceed. The class action device is preferable to individual litigation
16 because it provides the benefits of unitary adjudication, economies of scale, and comprehensive
17 adjudication by a single court. Finally, class wide litigation will insure that wrong doers do not
18 retain the ill-gotten gains acquired through their wrongful conduct.

19 28. There are no manageability problems with the proposed class action. The Class is
20 limited to California customers and only California law is to be applied. As a result, there are no
21 variations in state laws that would preclude maintenance of a class action.

22 29. As a result of AT&T's unlawful, unfair, deceptive and/or fraudulent business
23 practices, Class members have been incorrectly charged for data usage and data transfer charges,
24 over and above their normal monthly service charge. AT&T is liable to make restitution of such
25 incorrect charges including interest on the liquidated sum from the date of payment plus interest
26 along with attorneys' fees and costs as determined by the court. Plaintiff will amend the Complaint
27 at the time of trial to include any additional consumers who are continuing to be subject to AT&T's
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1 unfair business practices until such time as the practice has been enjoined. Further, Plaintiff reserves
2 the right to supplement the restitution award after trial and until an injunction is issued to include
3 additional persons who have been damaged by the unfair business practice of AT&T.

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5 **FIRST CAUSE OF ACTION**

6 ***(Unfair Competition - Cal. Business & Professions Code Section 17200)***

7 30. PLAINTIFFS incorporate by reference the allegations set forth in the preceding
8 paragraphs as if fully set forth herein.

9 31. California Business & Professions Code §17200 is properly applied to the claims of
10 AT&T customers in California. Business and Professions Code Section 17200 prohibits any
11 “unlawful ...business act or practice.” AT&T engaged in unlawful acts or practices by, *inter alia*,
12 incorrectly measuring the data usage and data transfer of PLAINTIFFS and other customers, and
13 thereby charging them for data charges which exceeded the amount of their actual data usage and
14 data transfer.

15 32. California Business and Professions Code Section 17200 also prohibits any
16 “fraudulent business act or practice.” Class members were and are likely to be deceived by AT&T’s
17 business practices in connection with data usage and data transfer because consumers are likely to
18 believe that the representations of data usage and data transfer by AT&T in the billing represents
19 the actual data usage and data transfer by the customer. Class members could not have known the
20 true facts because they were not provided with engineering reports from AT&T regarding the data
21 transfer and data usage for their services, which engineering reports when analyzed by an expert can
22 be shown to evidence the incorrect measure of data and representation of data usage by AT&T.

23 33. California Business and Professions Code Section 17200 further prohibits any
24 “unfair... business act or practice.” As detailed in the preceding paragraphs, AT&T engaged in a
25 systematic scheme to inflate the amount of data usage and data transfer of customers on the AT&T
26 cellular phone and wireless networks such that the data amounts represented by AT&T exceeded
27 the actual data usage and data transfer by three to five times in an attempt to impose inflated data
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1 transfer charges on AT&T customers. AT&T's conduct caused and continues to cause substantial
2 economic injury. Any possible justification for AT&T's wrongful conduct was, and is, vastly
3 outweighed by the adverse effects of such conduct. AT&T unfairly competes by offering service
4 agreements limiting them to charging for data transfer at specified rates, when in fact AT&T's
5 system incorrectly measures the data usage in order to inflate the charges to customers, and thereby
6 earn greater profit than the honest competitors who correctly measure data transfer. As a result,
7 Defendants received an unfair competitive advantage through this practice. AT&T's conduct is also
8 immoral, unethical and in violation of public policy. As a result, Defendants also engaged in unfair
9 business practices prohibited by California Business & Professions Code Section 17200, *et seq.*

10 34. As a result of Defendants' unlawful, deceptive or unfair act or practice, Plaintiff and
11 members of the Class have been injured in amounts to be proven at trial, and Defendants must be
12 ordered to reimburse these amounts to PLAINTIFFS and the other members of the Class.

13 35. The PLAINTIFFS were personally victimized by AT&T's practice and lost money
14 as a result of the alleged practices of AT&T. PLAINTIFFS have standing to bring this claim for
15 violation of Business & Professions Code because, as set forth hereinabove, PLAINTIFFS (a)
16 suffered injury in fact as a result of AT&T's conduct, (b) lost money as a result of AT&T's practice,
17 and (c) otherwise comply with the requirements of Section 382 of the Code of Civil Procedure.

18 19 **SECOND CAUSE OF ACTION**

20 ***(For Fraud and Deceit)***

21 36. PLAINTIFFS incorporate by reference the allegations set forth in the preceding
22 paragraphs as if set forth herein in full. This cause of action is brought against AT&T. This cause
23 of action is for a direct fraud and concealment by AT&T as herein alleged.

24 37. At all times during which AT&T imposed data usage and data transfer charges,
25 AT&T them, knowingly, intentionally, wilfully, and purposefully deceived PLAINTIFFS and the
26 other members of the Class by (1) making false and fraudulent representations regarding data usage
27 and data transfer on their wireless and cellular phone bills, (2) concealing from the PLAINTIFFS
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1 and the other members of the class the true facts concerning the actual data usage and data transfer
2 by the PLAINTIFFS and the other members of the Class , and (3) fraudulently billed PLAINTIFFS
3 and the other members of the Class for inflated data usage and data transfer charges as alleged
4 herein. AT&T carried out the fraud using a fraudulent measure of data usage and data transfer and
5 made the fraudulent representations and concealments through their monthly billing to the customer.

6 38. At all relevant times to this action, AT&T knew that its representations were in fact
7 false and inaccurate. The true and accurate facts knowingly and intentionally concealed by
8 Defendants, and each of them, were that amounts of data usage and data transfer by the customer
9 were inflated the by three to five times the actual amount. This information was known to the
10 AT&T, and AT&T intentionally withheld this information from PLAINTIFFS and the other
11 members of the CLASS.

12 39. At all times during which AT&T made the above-mentioned representations, AT&T
13 knew that the representations were false, misleading and inaccurate and intended that the
14 representations be repeated and relied upon. AT&T made the representations with the intent to
15 deceive the PLAINTIFFS and the other members of the CLASS, and with the intent to induce
16 PLAINTIFFS and other members of the Class to pay the inflated data usage and data transfer
17 charges. PLAINTIFFS and other members of the Class in fact relied on the false representations
18 of AT&T by paying the data usage and data transfer charges as represented by AT&T.

19 40. The misrepresentations and concealments as herein alleged were material and
20 significant as they increased the amount billed to and the amount paid by the customer. But for the
21 fraudulent representations and concealments of AT&T, PLAINTIFFS and the other members of the
22 Class would not have paid the inflated date usage and data transfer charges.

23 41. PLAINTIFFS and the other members of the Class had no knowledge of the falsity of
24 AT&T's representations or the concealments, and could not have known due to the conduct of
25 AT&T. In reliance upon such representations, at all times PLAINTIFFS and the other members of
26 the Class reasonably believed that AT&T's representations of the data usage and data transfer by
27 the customer was accurate and reflected the actual data usage and data transfer by the customer.

1 AT&T's fraud and concealments could not have been discovered by the customer, and was only
2 discovered by GUARDIAN in the December 2009 to February 2010 time period after consultation
3 with experts and using internal engineering reports from AT&T, which were not otherwise provided
4 by AT&T to customers.

5 42. PLAINTIFFS and the other members of the Class reasonably relied upon the
6 misrepresentations and were induced to and did in fact pay the inflated charges for data usage and
7 data transfer in connection with wireless and/or cellular phone services. PLAINTIFFS and the other
8 members of the Class would not have paid the data usage and data transfer charges, if they had
9 known and been informed of the true facts concerning their data usage and data transfer and the
10 intentional inflation of the data measurements by AT&T.

11 43. As a direct and proximate result of the forgoing fraudulent and deceitful
12 representations and concealments by AT&T, PLAINTIFFS and the other members of the Class paid
13 excessive data usage and data transfer charges, and sustained, or will sustain injuries and damage
14 as herein alleged, in an amount to be proven at trial. In particular, each Plaintiff and every member
15 of the Class uniformly suffered the same damage in the form of the excessive payment of charges
16 above their normal monthly service charge.

17 44. At all times herein alleged, AT&T acted wilfully, wantonly, with oppression, fraud and/or
18 malice, and with a conscious disregard of the rights of others, including the right of PLAINTIFFS and the
19 other members of the CLASS. Therefore PLAINTIFFS request that the trier of fact, in the exercise of its
20 sound discretion, should award punitive or exemplary damages to PLAINTIFFS and the other members of
21 the CLASS in an amount sufficient to punish AT&T and sufficiently large to be an example to others and
22 to deter AT&T and others from engaging in similar conduct in the future.

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25 **THIRD CAUSE OF ACTION**

26 ***(For Violations of Civil Code § 1770, et seq.)***

27 45. PLAINTIFFS incorporate by reference the allegations set forth in the preceding
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1 paragraphs as if set forth herein in full. This cause of action is brought against AT&T by Plaintiff
2 Shannon Quinn. This cause of action is for violations of the Consumer Legal Remedies Act
3 ("CLRA") by AT&T as herein alleged.

4 46. Plaintiff Shannon Quinn brings this cause of action on behalf of herself and other
5 consumers similarly situated. For purposes of this cause of action, the consumers similarly situated
6 consists of all consumers in California who are members of the Class alleged herein above ("CLRA
7 Subclass"). The term Consumers is used with the same meaning as in the CLRA definitions. The
8 applicable class period to this cause of action is the date beginning three years prior top the filing
9 of this action and ending on a date to be set by the Court.

10 47. The AT&T services, as described above, were purchased by Plaintiff Quinn and by
11 the other consumers similarly situated in the CLRA Subclass primarily for personal, family, or
12 household purposes. The members of the CLRA Subclass number in the thousands, and therefore
13 are impracticable to bring all members before the Court. The questions of law and fact common to
14 the CLRA Subclass under the CLRA are substantially similar and predominate over the questions
15 affecting individual members. The claims of Plaintiff Quinn are typical of the claims of the CLRA
16 Subclass. Plaintiff Quinn and her counsel will fairly and adequately represent the interests of the
17 CLRA Subclass.

18 48. AT&T violated its statutory duty by orchestrating, controlling and participating in an
19 scheme wherein AT&T artificially inflates the data usage and data transfer for these customers such
20 that AT&T represents the data usage and data transfer is an amount that is three to five times the
21 actual data usage and data transfer by the consumer, and AT&T then bills the consumer based upon
22 the inflated data usage and data transfer amount, not the actual data used and transferred by that
23 consumer, so that the consumer is overcharged.

24 49. AT&T violated its duty under the aforementioned statutes, including but not limited
25 to, Civil Code § 1770(a)(5), by, among other things, making false representations concerning the
26 characteristics and quantities of the data usage and data transfer by the consumer.

27 50. AT&T violated its duty under the aforementioned statutes, including but not limited
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1 to, Civil Code § 1770(a)(9), by, among other things, advertising services with the intent not to sell
2 them as advertised. AT&T advertises that consumers will be charged for data usage and data
3 transfer at a specific amount, but due to the knowing inaccurate measurement of data, AT&T
4 intentionally does not deliver the service as advertised.

5 51. AT&T violated its duty under the aforementioned statutes, including but not limited
6 to, Civil Code § 1770(a)(14), by, among other things, making false representations that the
7 transaction confers obligations on consumers to pay for data usage and data transfer, when in fact,
8 consumers are not obligated to pay for the inflated amounts of data usage and data transfer.

9 52. AT&T violated its duty under the aforementioned statutes, including but not limited
10 to, Civil Code § 1770(a)(16), by, among other things, making false representations that consumers
11 have been supplied with a specified amount of data usage and data transfer, when in fact, the amount
12 actually supplied was uniformly far less due to the inaccurate data measurement by AT&T.

13 53. AT&T's actions as alleged herein were unfair and deceptive and constituted the
14 concealment, suppression and omission of material facts with the intent that Plaintiff Quinn and the
15 CLRA Subclass would rely upon the false statement through the concealment, suppression and
16 omission of such material facts, all in violation of the applicable Consumer Legal Remedies Act.

17 54. AT&T represented to the Plaintiff and every other member of the CLRA Subclass, at
18 the time of billing, that they had used and transferred data in a specific amount, when in fact the
19 amount of the data actually used and transferred was far less than what was represented.

20 55. These representations were made by AT&T to Plaintiff Quinn and the CLRA
21 Subclass in writing on their monthly billing statements, and each member of the CLRA Subclass
22 relied on the representation by paying the charges on their billing statements. Because the true facts
23 concerning the actual data usage and data transfer were concealed by AT&T and never disclosed,
24 the true facts concerning the data usage and data transfer amounts were not and could not have been
25 known to Plaintiff Quinn or any other member of the CLRA Subclass. AT&T continues to engage
26 in this conduct.

27 56. When making the representations on the billing statements concerning data usage and
28

1 data transfer, AT&T intended that the representations be relied upon by all consumers in paying the
2 charges and provided no information to the contrary.

3 57. Plaintiff Quinn and the other members of the CLRA Subclass were injured and
4 suffered damage as a result of the many violations of the Consumer Legal Remedies Act. As a
5 direct and proximate result of the acts and practices alleged above, members of the CLRA Subclass
6 paid AT&T for data transfer and/or usage charges in excess of their normal monthly service charge
7 during the applicable class period. Plaintiff seeks injunctive relief to enjoin these violations of the
8 Consumer Legal Remedies Act.

9 58. Pursuant to Civil Code §1782(d), Plaintiff Quinn will amend this complaint to seek
10 a recovery of damages and other relief for AT&T's violations of the Consumer Legal Remedies Act
11 on behalf of herself and the CLRA Subclass.

12
13 **PRAYER**

14 **WHEREFORE**, PLAINTIFFS and the other members of the Class request judgment against
15 Defendants and each of them as follows:

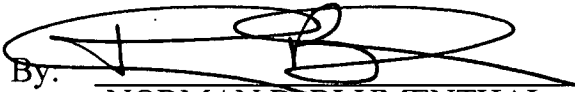
- 16 1. For an Order certifying this action as a class action;
- 17 2. For an award of restitution of amounts paid by paid by the PLAINTIFFS and the
18 other members of the Class in an amount to be proven at trial pursuant to Cal.
19 Business & Professions Code § 17203;
- 20 3. For damages on the second cause of action according to proof;
- 21 4. For punitive damages on the second according to proof;
- 22 5. For interest at the legal rate of interest on the foregoing sums;
- 23 6. For an order declaring the practice of Defendants to be in violation of California law;
- 24 7. For an order temporarily, preliminarily and permanently enjoining and restraining the
25 Defendants from engaging in unlawful conduct as set forth herein;
- 26 8. For injunctive relief brought under the provisions of Civil Code § 1770, et seq.;
- 27 9. For costs of suit herein incurred;
- 28

1 10. For reasonable attorneys' fees allowed by law; and,

2 11. For such other and further relief as the Court deems just and proper.

3 DATED: September 3, 2010

BLUMENTHAL, NORDREHAUG & BHOWMIK

5 
6 By. _____
7 NORMAN B. BLUMENTHAL
8 Attorneys for Plaintiffs
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DEMAND FOR JURY TRIAL

The PLAINTIFFS demand a jury trial on issues triable to a jury.

DATED: September 3, 2010

BLUMENTHAL, NORDREHAUG & BHOWMIK

By: 

NORMAN B. BLUMENTHAL
Attorneys for Plaintiffs

K:\D\NBB\Araza v. AT&T\p-complaint-DRAFT04.wpd

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

THE GUARDIAN CORPORATION, FRANK ARIZA, and
SHANNON QUINN

(b) County of Residence of First Listed Plaintiff Orange County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Norman Blumenthal, Blumenthal, Nordrehaug & Bhowmik,
2255 Calle Clara, La Jolla, CA, 92037, (858)551-1223

DEFENDANTS

AT&T SERVICES, INC.
10 SEP -3 PM 4:29

County of Residence of First Listed Defendant
(EXCEPT IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

DEPUTY

10 CV 1846 WQH CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|-----------------------------------------|---------------------------------------|----------------------------|---------------------------------------------------------------|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	PERSONAL INJURY	PERSONAL INJURY	REAL PROPERTY	LABOR	IMMIGRATION	OTHER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 1332 (Diversity Jurisdiction)

Brief description of cause:
Claims for unfair competition and fraud

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
 DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint:
 JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

09/03/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

17642
 1380-
 09-03-10

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS017642
Cashier ID: mbain
Transaction Date: 09/03/2010
Payer Name: BLUMENTHAL NORDREHAUG AND

CIVIL FILING FEE

For: GUARDIAN CORP V AT AND T
Case/Party: D-CAS-3-10-CV-001846-001
Amount: \$350.00

CHECK

Check/Money Order Num: 12155
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.